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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555 (JMP)

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5 In the Matter of:

6

7 LEHMAN BROTHERS HOLDINGS, INC., et al.,

8

9 Debtors.

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11 - - - - - x

12

13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17

18 June 28, 2012

19 10:00 AM

20

21 B E F O R E :

22 HON JAMES M. PECK

23 U.S. BANKRUPTCY JUDGE

24

25

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1 Hearing re: Status Conference on Debtors' Application to  
2 Assume Executory Contracts and Unexpired Leases Identified  
3 in Exhibit 2 to the Plan Supplement [ECF No. 21254]

4

5 Hearing re: Debtors' One Hundred Eight-Seventh Omnibus  
6 Objection to Claims (Misclassified Claims) [ECF No. 19817]

7

8 Hearing re: Two Hundred Nine-Seventh Omnibus Objection to  
9 Claims (Invalid or No Blocking Number LPS Claims) [ECF No.  
10 27868]

11

12 Hearing re: Debtors' Three Hundred Fourth Omnibus Objection  
13 to Disallow and Expunge Certain Filed Proofs of Claim [ECF  
14 No. 27875]

15

16 Hearing re: Plan Administrator's Objection to Claims filed  
17 by Kathleen Arnold and Timothy A. Cotton [ECF No. 27263]

18

19 Hearing re: Motion to Dismiss Kathleen Arnold and Timothy  
20 A. Cotten v. Lehman Holdings Inc., et al. [Adversary  
21 Proceeding No. 11-01540]

22

23

24

25 Transcribed by: Rebecca Sharp

Page 3

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1 APPEARED TELEPHONICALLY:

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4 MICHAEL NEUMEISTER

5 ERIC A. SCHAFFER

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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Good morning.

4 MR. LEMONS: Good morning, Your Honor. Robert  
5 Lemons from Weil Gotshal on behalf of Lehman Brothers  
6 Holdings, Inc., and its affiliated Chapter 11 debtors.

7 With Your Honor's permission, we'll just go down  
8 the order, on the order of the agenda.

9 THE COURT: That's perfectly fine.

10 MR. LEMONS: The first item on the agenda is a  
11 status conference on the debtors' application to assume  
12 executory contracts and unexpired leases identified on  
13 Exhibit 2 of the Plan Supplement. I just, you know, plan to  
14 give Your Honor a brief update on where we are and what's  
15 happening with those.

16 As Your Honor may recall, paragraph 30 of the  
17 confirmation order provided that the hearing on the debtors'  
18 assumption of executory contracts that were the subject of  
19 objections, more than 150 at that time, would be adjourned  
20 until February 14th of this year. Subsequently the hearing  
21 on that proposed assumption was adjourned until April 10th  
22 of this year and then to June 26, 2012. We've now adjourned  
23 the hearing again to September 20, 2012.

24 The adjournments, Your Honor, are intended to  
25 provide the debtors time to continue to work with the

1       counterparties to address the counterparties' assumption  
2       related concerns and hopefully resolve their, the issues  
3       with the contracts in toto. The process in our view has  
4       been necessary because nearly all of the executory contracts  
5       in question here are derivative contracts. I think there  
6       are only about six that are nonderivatives. And many of the  
7       derivatives contracts, as Your Honor is aware, involve  
8       complicated and uncertain issues of law and fact. So it's  
9       certainly the debtors' desire to try to resolve as many of  
10      these as possible consensually without bringing them to Your  
11      Honor.

12                  Many of these derivative contracts are also the  
13       subject of ADR proceedings and of course informal  
14       negotiations between the debtors and the counterparties.  
15       The process so far, Your Honor, in our view has been very  
16       successful. As of the confirmation hearing there were more  
17       than 150 objections pending relating to more than 675  
18       executory contracts. Since that time the debtors and a  
19       number of the counterparties have entered into reservation  
20       and rights agreements that have allowed the debtors to  
21       resolve 82 objections relating to approximately 193 of the  
22       executory contracts. Many of these resolutions involve the  
23       debtors' withdrawal of their request to assume the  
24       applicable contracts and the parties agreeing that their  
25       rights wouldn't be modified by that withdrawal.

1               In addition, Your Honor, several counterparties  
2 have agreed to withdraw their objections to assumption.  
3               Inasmuch as we need an order to assume those contracts we  
4 sought in this court, entered an order authorizing the  
5 assumption of six executory contracts on March 19th of this  
6 year. And there is a pending notice of presentment of an  
7 order to assume four more, which certain details of that are  
8 being worked out with the parties at this point.

9               Additionally, Your Honor, since the confirmation  
10 hearing 23 objections have by agreement between the parties  
11 been adjourned without date to give the parties more time to  
12 work through these issues without keeping us on Your Honor's  
13 calendar. Those deferred objections relate to approximately  
14 209 executory contracts.

15               So to sum up sort of where we started and where we  
16 are today, we originally had more than 150 objections  
17 involving more than 675, the number might be actually closer  
18 to 700 executory contracts. Today we have 46 unresolved  
19 objections involving approximately 290 executory contracts,  
20 and 23 deferred objections involving approximately 290  
21 contracts.

22               Since the confirmation hearing the debtors have  
23 filed six notices of withdrawal or deferral of their  
24 application. These reflect the efforts I just described.  
25 And exhibits showing the current sort of groups of resolved,

1 deferred, and unresolved objections were attached to the  
2 agenda that was filed with the court for today's hearing.

3 In addition to the progress that I just described  
4 the debtors have also made headway with trustees who filed  
5 objections with respect to hundreds of contracts. U.S. Bank  
6 acting as a trustee has objected to the assumption of  
7 approximately 100 executory contracts. The debtors and U.S.  
8 Bank have agreed to adjourn without a date the hearing on  
9 the proposed assumption of 63 of these, and the debtors have  
10 withdrawn their motion to assume six of these contracts.  
11 Those are included and reflected in the numbers that I just  
12 provided to the court. Additionally U.S. Bank has agreed to  
13 withdraw its objection to 17 more executory contracts. That  
14 will reduce the numbers I gave you by that amount. And the  
15 debtors expect that the balance of the executory contracts  
16 that were subject to that objection and that have not  
17 otherwise been resolved will be adjourned indefinitely,  
18 assuming U.S. Bank is able to get the requisite  
19 authorization that it needs to do that.

20 Additionally, BNY, or Bank of New York, acting as  
21 trustee has objected to the assumption of approximately 140  
22 executory contracts. The debtors and Bank of New York are  
23 in the process of establishing procedures to address the  
24 concerns that Bank of New York has raised with regard to  
25 each of these contracts. And we are hopeful that we will be

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1 able to resolve all of those objections. That will remove a  
2 very large chunk of the remaining contracts.

3 Between now, in addition to those efforts between  
4 now and the September 20th hearing date the debtors expect  
5 to continue negotiating with the counterparties and, you  
6 know, in any of the filed objections to try to resolve as  
7 many as possible. And we are optimistic that we will be  
8 able to continue to make steady progress. And in fact it is  
9 my understanding that just yesterday we resolved entirely  
10 the objection of another counterparty which I don't think is  
11 reflected in the numbers that I provided you.

12 That is the end of my report, Your Honor. I am  
13 happy to answer any questions that you have.

14 THE COURT: I have just a couple. First of all, I  
15 think it's a very encouraging report and I appreciate the  
16 detail that you provided. I do have a procedural question  
17 that comes to mind as I'm hearing you describe adjournments  
18 without date and indefinite adjournments. What's the end  
19 game here in terms of those matters that are not being  
20 resolved by formal agreement? Is there an expectation that  
21 these matters will simply die a peaceful death in limbo  
22 somewhere? Or will there be a need for further hearings  
23 with respect to those matters that have not been  
24 definitively resolved?

25 MR. LEMONS: Your Honor, I don't think we intend

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1 to let things die a peaceful death in limbo. That doesn't

2 --

3 THE COURT: That was simply a poetic way of  
4 describing what might happen if we didn't have a firm date  
5 for reckoning.

6 MR. LEMONS: I think there have been sort of  
7 specific agreements with each of those parties as to the  
8 process to put something back on the calendar. And it is  
9 certainly our hope and desire, and we can, you know,  
10 encouraging our clients to convey, to speak with each other  
11 to try to resolve the issues so we don't reach that point.  
12 If they are unable to resolve those, it is certainly  
13 possible that they will have to be rescheduled for a hearing  
14 on Your Honor's calendar. But certainly our intention is,  
15 and hope, is to avoid that as much as possible.

16 THE COURT: I hope that happens as well. Now let  
17 me just, if I can get my mind around what's involved here,  
18 have a better understanding as to what kinds of disputes  
19 would be litigated, to the extent that we're unable to wrap  
20 these things up consensually? What kinds of matters are we  
21 going to be dealing with? And are these issues that will be  
22 presented as disputes for resolution as a matter of law? Or  
23 will they be factual disputes that will require what amounts  
24 to a series of evidentiary hearings?

25 MR. LEMONS: I think it will probably depend on

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1 the specific contracts. I don't have a complete catalog of  
2 the issues. But to give Your Honor a flavor of some that  
3 come to mind, that there, you know, have been objections to  
4 the ability of the debtors to assume terminated contracts.

5 THE COURT: Right. I'm familiar with that.

6 MR. LEMONS: For example. Which I think is  
7 probably largely a legal issue, although I'm frequently  
8 surprised in this case when I think things are legal issues  
9 that they evolve, or devolve depending on your perspective,  
10 into factual issues, or mixed issues. Other issues of  
11 course are with respect to the live contracts. People have  
12 objected to the debtors' ability to cure the defaults and  
13 provide adequate assurance of future performance. There are  
14 some contracts where there is a dispute as to whether the  
15 contract was effectively terminated by the counterparty or  
16 not, which adds an additional wrinkle on top of that. There  
17 are also a number of contracts, I don't know the exact  
18 number, but where the counterparty asserts that it has a  
19 claim against the debtor, and where the debtors believe that  
20 either the counterparty has no claim, or I guess frankly  
21 we're talking about ones we're trying to assume, the  
22 debtors' believe that they have a claim against the  
23 counterparty. So in addition to the sort of first line  
24 issues of whether the contract can be assumed or not, there  
25 are also issues with respect to that specific contract and

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1 the disputes over, either factual or legal disputes, or who  
2 owes who what amounts.

3 THE COURT: Okay.

4 MR. LEMONS: Those are the ones that come to mind  
5 immediately.

6 THE COURT: And then to the extent that you have  
7 matters that are adjourned without date, and as you can tell  
8 I'm somewhat concerned about that category.

9 MR. LEMONS: Right.

10 THE COURT: Because that seems to me to be a  
11 category that isn't being addressed actively for the time  
12 being and it may come back in the future. Is there any  
13 consideration that those matters will end up in alternative  
14 dispute resolution, or some other means of resolution, or  
15 avoid the necessity of a formal hearing? Or is it too soon  
16 to tell?

17 MR. LEMONS: I think it's too soon to tell. We  
18 are trying to utilize the existing ADR procedures, which  
19 really relate more to the underlying disputes in the  
20 contracts. If we reach a point in time where there is sort  
21 of this, a thorny knot either of these indefinitely  
22 adjourned contracts or, you know, ones where the objection  
23 is still outstanding and we're not able to even move it into  
24 that category, it may be that we're either discussing with  
25 the counterparties or back in front of Your Honor to discuss

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1 some sort of ADR procedures to address the assumption issues  
2 as well, perhaps, as underlying issues. But we haven't  
3 formally thought of that. But as Your Honor knows we're  
4 generally big fans and proponents of using ADR to try to  
5 both avoid burdening the court with issues and also avoid  
6 rolling the dice on some very uncertain legal and factual  
7 issues.

8 THE COURT: I'm a big fan of ADR myself. One  
9 observation, and I'm not sure if this applies to the  
10 situation you have described or not, but in the LBI case  
11 there are a number of what I'll call test cases that have  
12 been presented by the trustee in which certain governing  
13 issues that cross over into any number of claimants against  
14 the LBI estate have been presented for judicial  
15 determination as a class. One possibility for you to  
16 consider, I'm not suggesting that it in fact is applicable  
17 in this setting, is to the extent you are unable to reach  
18 agreements with regard to a certain category of contracts or  
19 reach agreement with regard to certain legal issues as to  
20 which there is at the moment no finding precedent,  
21 conceivably these could be grouped and presented for  
22 disposition pursuant to some stipulation which you might  
23 work out. I'm not encouraging it. I'm simply identifying  
24 it as another alternative.

25 MR. LEMONS: I appreciate that suggestion, Your

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1 Honor. And we will certainly keep that in mind as we are  
2 working through the complex task.

3 THE COURT: Okay, fine. Thank you very much, Mr.  
4 Lemons. I appreciate your report.

5 MR. LEMONS: You're welcome. My -

6 THE COURT: Someone wishes to be heard, however.

7 MR. STEIN: Good morning, Your Honor. Matthew  
8 Stein, Kasowitz, Benson, Torres & Friedman, on behalf of a  
9 number of note holders that have filed a joint objection and  
10 that we call ourselves objecting note holders.

11 I just rise to key off Your Honor's first question  
12 to counsel, basically saying that while we are fine with  
13 the, we are, our contracts, we object to awarding the  
14 contracts designated for a hearing on September 20th. And  
15 while we are fine with this adjournment, we reserved our  
16 rights to object to any further adjournments of a hearing on  
17 the ability to assume those contracts.

18 THE COURT: That sounds like a reservation of  
19 rights.

20 MR. STEIN: Thank you.

21 MR. LEMONS: With that, Your Honor, I will turn  
22 the colleague over to my colleague -- or microphone over to  
23 my colleague Mark Bernstein to --

24 THE COURT: Okay, fine.

25 MR. LEMONS: -- go through the uncontested

1 matters.

2 MR. BERNSTEIN: Good morning, Your Honor. Mark  
3 Bernstein from Weil Gotshal on behalf of Lehman Brothers  
4 Holdings, Inc. and its affiliated Chapter 11 debtors.

5 We have a relatively short claims agenda for you  
6 this morning. There are two uncontested items and two  
7 contested items, one of which has since been resolved. So  
8 there is actually only one contested item going forward  
9 today.

10 Item number two on the agenda is the debtors' one  
11 hundred eighty-seventh omnibus objection to claims. That  
12 objection was initially heard more than a year ago. It  
13 sought to reclassify claims that were filed as secured  
14 claims as unsecured claims. One of the claimant's on that  
15 objection was WestLb. They initially filed a response  
16 opposing the objection based on the reservations of rights  
17 that are included in the objections that the order has no  
18 effect on any valid right to set off. WestLb has agreed to  
19 not prosecute their response. As a result, they have agreed  
20 to the entry of the order reclassifying their claim from  
21 secured to unsecured. And as a result we are going forward  
22 on an uncontested basis and ask Your Honor to grant the one  
23 hundred eighty-seventh omnibus objection as it relates to  
24 the claim of WestLb.

25 THE COURT: It is granted as to that claim.

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1                   MR. BERNSTEIN: Thank you, Your Honor. The item  
2 number three is the debtors' two hundred ninety-seventh  
3 omnibus objection to claims. It sought to expunge claims  
4 that had either invalid or no blocking numbers. These are  
5 structured, Lehman Program Securities claims which the bar  
6 date order required blocking numbers. This, we received  
7 several responses to this objection and all those responses  
8 have been adjourned to a future date. We are going forward  
9 today only on an uncontested basis. There was one change to  
10 the order to correct an error of one of the claim numbers in  
11 one of the footnotes in the order. The affected claimant  
12 actually pointed this out to us and we agreed to make the  
13 change. And that is the only change to the order.  
14 Otherwise, the order is exactly as it was attached to the  
15 objection. So this is also going forward on an uncontested  
16 basis and we respectfully request Your Honor to grant the  
17 objection.

18                   THE COURT: It's granted on an uncontested basis.

19                   MR. BERNSTEIN: Thank you, Your Honor. Item  
20 number four on the agenda which was initially listed as a  
21 contested item is the debtors' three hundred fourth omnibus  
22 objection to claims. This sought to disallow and expunge  
23 certain proofs of claim on the basis that they were  
24 duplicative of other claims that are on the claims register.  
25 These claims all relate to certain derivative contracts and

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1 reserve fund agreements that were entered into between LBSF  
2 and certain issuers of municipal or other bonds or the  
3 borrowers of those bonds. In this case the issuers and the  
4 borrowers filed claims for the amounts due under those  
5 agreements. They are the proper parties under those  
6 agreements to collect amounts due. The indentured trustees  
7 for those bond issuances also filed claims to collect the  
8 same amounts due under those same agreements. U.S. Bank  
9 filed a response asserting that their claim was, agreeing  
10 that it was largely duplicative of the claims of the  
11 borrowers or the issuers. However, they also asserted in  
12 their claim that they may be entitled to fees or expenses  
13 under those agreements. The debtors do not think that is  
14 the case. However, it is a portion of their claim that  
15 actually is not duplicative of the other claims. And as a  
16 result we reached an agreement with U.S. Bank that the U.S.  
17 Bank claims will be expunged and disallowed solely to the  
18 extent they relate to amounts due under the agreements that  
19 are not for fees and expenses of U.S. Bank. And the U.S.  
20 Bank claims will remain on the claims register at this time  
21 in unliquidated amounts subject to further objection or  
22 their further rights to amend the claim.

23 So we have a revised order which I can hand up to  
24 Your Honor which has been accepted by U.S. Bank. And as a  
25 result this is going forward on an uncontested basis.

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1 THE COURT: Okay. Fine. You can hand that up.

2 Thank you. Is there anyone here in person or by phone on  
3 behalf of U.S. Bank who wishes to comment or confirm what  
4 has just been stated by Mr. Bernstein?

5 MR. PRICE: Good morning, Your Honor. Craig Price  
6 from Chapman and Cutler on behalf of U.S. Bank National  
7 Association. And I would confirm what Mr. Bernstein said.

8 THE COURT:

9 MR. PRICE: We are fine with the order.

10 THE COURT: Fine. All right. The order will be  
11 entered.

12 MR. BERNSTEIN: Thank you, Your Honor. The last  
13 item on the agenda will be handled by my colleague Zaw Win.

14 MR. WIN: Good morning, Your Honor. Zaw Win, Weil  
15 Gotshal & Manges, for Lehman Brothers Holdings, Inc. The  
16 final matter on the agenda is the consolidated hearing on  
17 LBI's motion to dismiss adversary proceeding number 11-0154  
18 and the plan administrator's objection to the claims filed  
19 by Timothy Cotten and Kathleen Arnold.

20 LBHI's motion to dismiss was filed on May 9, 2011.  
21 And at a hearing on June 15, 2011 the court suggested that  
22 it was inclined to dismiss the adverse proceeding but agreed  
23 to defer a final decision so that Arnold and Cotten would  
24 have an opportunity to obtain legal counsel. More than a  
25 year has now passed and Arnold and Cotten have still not

1 responded to LBHI's motion to dismiss.

2 On April 3, 2012 the plan administrator filed its  
3 objection to the claims filed by Arnold and Cotten. The  
4 claims objection was scheduled for hearing on May 31, 2012.  
5 Arnold and Cotten filed a request for additional time to  
6 respond to the claims objection on April 30th. And at the  
7 May 31st hearing the court instructed the plan administrator  
8 to schedule a consolidated hearing on the motion to dismiss  
9 the adverse proceeding and the claims objection.

10 Accordingly, the consolidated hearing was  
11 scheduled for today. And June 21, 2012 was established as  
12 the deadline by which Arnold and Cotten were required to  
13 respond both to the claims objection and to the motion to  
14 dismiss. No responses or other pleadings were filed by the  
15 response deadline or thereafter.

16 Arnold and Cotten have been provided with more  
17 than adequate time to respond in each of these matters. The  
18 debtors' estate should not be required to continue to incur  
19 legal expenses to oppose these claims which, as set forth in  
20 our papers, are entirely without merit, and with respect to  
21 which Arnold and Cotten seem to be disinterested in  
22 pursuing. Unless the court has any questions the plan  
23 administrator respectfully requests that the court dismiss  
24 the adversary proceeding and also grant the plan  
25 administrator's motion to dismiss.

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1                   THE COURT: I have a couple of questions relating  
2 to notice. I recognize that notice went out in the ordinary  
3 course. But was there any contact made by debtors' counsel  
4 or by any representative of the debtors to either Kathleen  
5 Arnold or Timothy Cotten with reference to today's hearing?  
6 And in effect the same question in a different form. Did  
7 either of these individuals reach out to counsel or  
8 communicate with counsel in any manner with regard to the  
9 issues before the court today?

10                  MR. WIN: Yes, Your Honor. I sent Mr. Cotten an  
11 email at an email address that I previously used to  
12 communicate with him earlier this week notifying him again  
13 about the hearing and did not receive a response.  
14 Additionally, I have not received any communication from Mr.  
15 Arnold or -- excuse me, Ms. Arnold or Mr. Cotten.

16                  THE COURT: Okay. Let me just inquire, because  
17 there are occasions when individuals participate by  
18 telephone, if either Kathleen Arnold or Timothy Cotten are  
19 on the telephone this morning? I hear no response and I  
20 don't see them in court. So this is a matter which is  
21 uncontested both in terms of papers filed of record and  
22 uncontested in terms of personal appearance. Under the  
23 circumstances I'm going to recite into the record a  
24 procedural history with reference to this. And enter my  
25 ruling orally. And I'm going to request that counsel obtain

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1 a copy of the transcript and provide actual notice through  
2 ordinary channels to these claimants and plaintiffs of the  
3 court's ruling.

4 On February 25, 2011 Kathleen Arnold and Timothy  
5 Cotten, as pro se litigants, commenced adversary proceeding  
6 number 11-01540 by filing a complaint against Lehman  
7 Brothers Holdings, Inc. in this court. The court held an  
8 initial case conference in the adversary proceeding on April  
9 13, 2011. At that time the court directed the parties to  
10 confer with each other and prepare a briefing schedule. The  
11 parties advised the court of their agreed deadlines for  
12 responsive papers and a hearing date.

13 On April 21 the plaintiffs filed an amended  
14 complaint. LBHI moved to dismiss the amended complaint on  
15 May 9, 2011. At a hearing on May 18, 2011 the court urged  
16 plaintiffs to engage counsel. In order to allow more time  
17 for them to do so the court scheduled a hearing on the  
18 motion to dismiss for July 20, 2011 with responsive papers  
19 due on July 8.

20 At a hearing on Jun 15, 2011 plaintiffs reported  
21 that they had not yet retained counsel but expressed that  
22 they wished to do so. The court agreed to provide  
23 plaintiffs with additional time to respond to the motion to  
24 dismiss. The court explained at that time, "due process  
25 involves predictability, schedules that people comply with,

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1 fair notice to your adversary, and an opportunity before an  
2 unbiased tribunal to be heard." The court further explained  
3 that plaintiffs would have that right, "but that means  
4 answering the motion to dismiss. And if you are doing it  
5 without a lawyer it will be by a date that either I set or  
6 that you agree to with your adversary. If you can't reach  
7 an agreement as to when that will be I will set the date."  
8 That's a reference to the transcript of the hearing that  
9 took place on June 15, 2011. To date plaintiffs have not  
10 notified the court that they have retained counsel, nor have  
11 they responded to LBHI's motion to dismiss.

12 On April 3, 2012 LBHI as plan administrator under  
13 the modified third amended joint Chapter 11 plan of Lehman  
14 Brothers Holdings, Inc. and its affiliated debtors filed an  
15 objection to certain claims filed by Ms. Arnold and Mr.  
16 Cotten. On April 30, 2012 Ms. Arnold and Mr. Cotten filed a  
17 request for additional time to respond to that claims  
18 objection.

19 At a hearing on May 31, 2012 the court instructed  
20 LBHI to schedule this consolidated hearing on the motion to  
21 dismiss and the claims objection. On June 7, 2012 LBHI  
22 filed a notice of consolidated hearing on Lehman Brothers  
23 Holdings, Inc.'s motion to dismiss adversary complaint, and  
24 plan administrator's objection to claims filed by Kathleen  
25 Arnold and Timothy A. Cotten. The notice stated that

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1 responses to the motion to dismiss or the claims objection  
2 were to be filed on or before June 21, 2012. The notice  
3 also stated that failure to timely file and serve a response  
4 could result in the granting of the relief of question by  
5 default and dismissal of the adversary proceeding.

6 LBHI filed the notice on the docket of both the  
7 LBHI Chapter 11 cases and adversary proceeding number 11-  
8 01540. According to the affidavit of service sworn to on  
9 June 8, 2012, LBHI sent the notice by overnight mail to both  
10 Ms. Arnold and Mr. Cotten. Ms. Arnold and Mr. Cotten have  
11 filed no responsive pleadings in accordance with the notice.  
12 Furthermore, as noted on the record today neither Ms. Arnold  
13 nor Mr. Cotten are physically present in court, nor are they  
14 participating in this hearing by telephone. As a result  
15 plaintiffs have failed to respond and are in default. This  
16 is true despite repeated adjournments that have occurred  
17 over the past approximately 14 months. Accordingly the  
18 motion to dismiss is granted as uncontested. Moreover, as a  
19 result of the failure of Ms. Arnold and Mr. Cotten to  
20 respond in a substantive manner to the claims objection that  
21 objection is sustained. Claim numbers 234534313 and 34320  
22 are disallowed and shall be expunged from the claims  
23 register.

24 I also note, and this is purely a matter of  
25 coincidence I suspect, that the binder for today's hearing

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1 includes a copy of a decision that I was not aware of prior  
2 to my preparation for today's hearing. And that's a  
3 decision of District Judge Roger Titus which is dated June  
4 14, 2011. That decision was rendered in civil case number  
5 RWT07-2617 in the United States District Court for the  
6 District of Maryland in a litigation brought by Kathleen  
7 Arnold and Mr. Cotten against CitiMortgage, Inc. and other  
8 defendants. Without going into the substance of that  
9 decision, Judge Titus on that day, which coincidentally is  
10 one day before the last hearing when I heard from these  
11 plaintiffs, denied plaintiff's Rule 60(b) motion as being  
12 without merit.

13 I am unable to tell by virtue of the conduct of  
14 the plaintiffs whether they have as a result of that  
15 decision concluded that it is no longer worth prosecuting  
16 their claims in any court. But that is a possible  
17 conclusion that one might draw from the facts and  
18 circumstances. Moreover, the decision by District Judge  
19 Titus appears to constitute an on the merits determination  
20 that the claims of these plaintiffs, at least as to the  
21 defendants before him, were in all respects without merit.

22 My decision is purely procedural and is based upon  
23 the failure of these individuals to respond after proper  
24 notice. Accordingly this constitutes the ruling of the  
25 court, the adversary proceeding is dismissed, and the claims

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1       are expunged.

2                   MR. WIN: Thank you, Your Honor. That concludes  
3 today's agenda.

4                   THE COURT: Fine. We are then adjourned.

5                   (Whereupon, proceedings concluded at 10:36 a.m.)

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1                   I N D E X

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3                   RULINGS

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11 <b>Debtors' Three Hundred Fourth</b>	18	11
12 <b>Omnibus Objection to Disallow</b>		
13 <b>and Expunge Certain Filed</b>		
14 <b>Proofs of Claim</b>		
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17 <b>To Claims filed by Kathleen</b>		
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20 <b>Motion to Dismiss Kathleen Arnold</b>	23	18
21 <b>and Timothy A. Cotten v. Lehman</b>		
22 <b>Holdings Inc., et al.</b>		
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C E R T I F I C A T I O N

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3 I, Rebecca Sharp, certified that the foregoing transcript is  
4 a true and accurate record of the proceedings.

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6 **Rebecca Sharp**

Digitally signed by Rebecca Sharp  
DN: cn=Rebecca Sharp, o=Veritext,  
ou, email=digital@veritext.com, c=US  
Date: 2012.07.02 15:19:28 -04'00'

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8 **Rebecca Sharp**

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**Mineola, NY 11501**

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**Date: July 2, 2012**

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